

**WRITTEN STATEMENT OF DONALD P. GARBER,
COMMISSIONER
MAJOR LEAGUE SOCCER**

**BEFORE THE HOUSE ENERGY AND COMMERCE SUBCOMMITTEE
ON COMMERCE, TRADE AND CONSUMER PROTECTION**

ON

H.R. 1862

THE DRUG FREE SPORTS ACT

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Chairman Stearns and Members of the Committee:

Major League Soccer ("MLS") condemns the use of performance-enhancing substances and supports the various Congressional investigations into the use of steroids and related substances in professional sports. Doping violates the ethics of sport, sets a poor example for fans, particularly young fans, and poses significant health risks to the athletes. The recent scrutiny given to the subject has caused the leagues and player unions to review their policies, and has focused attention on the dangers of steroid use for both professional and young athletes alike.

Soccer throughout the world is not immune from doping. Given the physical rigors of the sport, there would no doubt be competitive advantages for a player to illegally enhance his size, strength, speed, endurance and recuperative abilities. In fact, there have been several cases in international soccer during the last decade where star players, and in one case a team, was found guilty of utilizing performance-enhancing drugs.

MLS, however, has been free of doping due to our focus on the issue, the ongoing review of our policies, our partnership with our Union and the commitment by our players. MLS also attributes its success to the creation of a “zero tolerance” policy at the League’s inception in 1996. This initial policy stemmed from MLS’ desire to ensure the integrity of our game and the safety of our athletes, to present a positive image to the American sports fan and to hold its players up as positive role models to the nation’s youth.

While the policy has expanded from a focus on drug testing to a more comprehensive substance abuse and behavioral health program that includes education, prevention, and, when necessary, treatment, MLS has always had the ability to create and enforce a policy that is one of the strictest in professional sports. As a result, the League has an exemplary testing record.

Earlier this year, MLS concluded its first Collective Bargaining Agreement with its players. During the collective bargaining process, MLS maintained its commitment to a strict policy that provides the League with complete discretion to discipline players who use performance-enhancing substances. In ratifying the CBA, the players affirmed this policy. Our current policy:

- adopts the WADA list of banned substances;
- subjects players to testing year round;
- subjects players to random testing upon no notice;
- subjects each player to testing at least once a year;
- has no limit on the number of times a player may be tested;

- provides for discipline up to and including termination for a first-time offense - -
MLS is the only major league in which a player's employment may be
terminated for a first offense.

Although the idea of creating universal drug testing standards for all U.S. professional sports is commendable, MLS believes that this issue is more appropriately managed through a league-specific program created in collaboration with the players during the collective bargaining process. Through discourse and negotiation between those parties most engaged in the sport, we believe that MLS has created, and will continue to maintain, a very effective and focused doping policy that has led to its demonstrably successful record in this area.

In controlling its own policy, MLS can continue to tailor the policy to meet the specific needs of the sport of soccer and its unique player pool. In addition, if both the League and players have a hand in creating the policy, we believe it will be more effective as it will be more readily embraced than a policy mandated by a third party.

MLS also believes that a single government-mandated policy cannot adequately govern or address the unique and distinct qualities of the different professional leagues. These differences are significant and include, among others: league structure, economic status, labor relations, player demographics, length of the season and physical demands particular to each sport. Importantly, soccer is an internationally regulated sport. Subjecting the sport to a "one-size-fits-all" policy, could lead to a variety of unintended consequences.

The Drug Free Sports Act

MLS believes that the goal of the Drug Free Sports Act (“Act”) is noble and applauds the idea of restoring the integrity and trust between the players and fans that has been damaged by recent scandals. It is important to note that MLS’ policy is aligned with many of the key elements of the Act. However, as previously stated, it is our strong belief that a sport-specific program will be more effective than a generalized program that attempts to encompass every sport. Nonetheless, we are pleased to assist the Committee by providing feedback on the proposed legislation.

Timing and Frequency of Random Testing

The Act requires each athlete to be subject to a minimum of one test each year to be conducted randomly with no notice provided to the athlete.

The MLS testing program currently exceeds this requirement. MLS tests every player at least once with no notice and otherwise subjects its players to unlimited, random testing year-round.

MLS doubts that a single test will be a sufficient deterrent unless the threat of future testing exists. This was an issue in our CBA discussions and we applaud our Union for supporting more substantial testing.

Applicable Substances

The Act sets the WADA International Standard Prohibited List as the applicable standard. As previously stated, MLS has already adopted the WADA Prohibited List as its prohibited list.

Soccer perhaps more than any other team sport is truly international. MLS players compete in numerous international competitions including the Olympics and FIFA World Cup and are already subject to strict international doping standards. More than twenty-five percent (25%) of the League's players are part of the player pools for various national teams. With such a large percentage of MLS' player pool already subject to the WADA Prohibited List for international competition, MLS believed that it should hold its players to the same standard in domestic competition.

In addition, the WADA Prohibited List is the strictest standard in sports. By adopting it, MLS is taking the strongest possible stance against doping and attempting to protect its player pool from the dangers associated with all performance-enhancing substances.

Method of Testing and Analysis

The Act requires that testing and analysis be administered by an independent party not affiliated with the professional sports association.

The MLS program is administered by doctors from Assessment Intervention Resources ("AIR") who have expertise in the fields of addictionology, behavioral health, and drug testing. Pursuant to the collective bargaining agreement, both the League and MLS Players Union must approve the program doctors.

Although AIR consults with the League on general program parameters and costs, the doctors are independent contractors and their decisions are free from League influence. MLS believes this is the most appropriate structure.

Penalties: Suspension

The Act proposes a minimum suspension of two years for a first positive test and a permanent suspension for a second positive test.

Currently, MLS has the right to impose discipline up to and including termination for a first offense for a performance-enhancing drug violation. MLS is the only major U.S. professional sports league that has the right to terminate a player for a first offense.

While we understand the appeal of certainty, during the negotiation of the CBA, MLS considered, and rejected, the inclusion of a minimum sanction for violations of the policy. MLS believes that a player is more likely to be deterred from violations if he knows that even a first violation can result in a termination of his contract. The inclusion of a minimum sanction in the policy could result in a player judging that the risk of receiving the minimum sanction is worth the violation.

MLS also believes that disciplinary discretion is important because mandatory minimum standards may create unjust results. No one can foresee the unique circumstances of each individual case. Depending on the length of the minimum suspension, there could be a situation in which the minimum is too harsh. The penal code treats individuals who commit similar crimes differently based on intent and premeditation. Flexibility is necessary in imposing discipline in order to ensure that a player who knowingly uses performance-enhancing substances is treated more harshly than a player who unknowingly ingests a tainted nutritional supplement.

Although MLS retains discretion, the League will not abdicate its responsibility to impose appropriate discipline. Nor will discretion be used to treat star players differently than other players. We serve as the guardians of the sport of soccer in the U.S. We take this responsibility very seriously. We established a strong program at inception and continue to improve it to ensure that our athletes are held to the highest possible standard. We have taken a leadership position in this area and will continue to lead responsibly in the future. We are justifiably proud of our record.

Penalties: Disclosure

The Act requires disclosure to the public of the name of any player having a positive test result.

MLS will disclose the name of any player that has a verified positive test result for a performance-enhancing substance.

Appeals Process

The Act states that any athlete who tests positive has the opportunity for a prompt hearing and a right to appeal before its professional sports association.

MLS currently provides players a right to appeal a positive test. We believe that an accused party's right to a fair hearing is fundamental. The key to this provision to ensure fairness is that the hearing be conducted by the individual league and not a third party unconnected to the sport.

Summary

Every professional sports league shares the belief that professional athletes have a special relationship with their fans. They are revered, respected and emulated in ways unmatched in our society. As a result, it is our strong belief - - one shared with our players - - that we together have a responsibility and an obligation to be held to a higher standard of behavior on and off the field. We need to “lead by example” and take a stand against steroid abuse to ensure that our young fans and future players will always be competing in a drug-free environment.

MLS acknowledges the urge to establish universal standards for all sports leagues, however, we believe that specialized programs - - collaboratively created and agreed to between leagues and their players- - tailored to address the specific needs and concerns of each sport, will be more effective in creating drug-free sports.

One only needs to look at MLS’ success to see the validity of this approach. Working together with our players, MLS has created a strict and rigorous drug testing and discipline program that establishes our players as role models, and “citizen athletes.”